

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PEDRO JOAQUIN OLIVAS,

Petitioner,

No. 2:11-cv-1420 KJN P

vs.

MATTHEW CATE,

Respondent.

ORDER

_____/

Petitioner, a state prisoner at Mule Creek State Prison, has filed a document styled “motion for stay and abeyance,” seeking a 60 day stay from the Supreme Court denial to file a petition for writ of habeas corpus in the District Court. No other pleadings have been filed by the petitioner. In order to commence an action, petitioner must file a petition for writ of habeas corpus¹ as required by Rule 3 of the Rules Governing Section 2254 cases, and petitioner must either pay the required filing fee or file an application requesting leave to proceed in forma

¹A petitioner for habeas corpus relief must name the state officer having custody of him or her as the respondent to the petition.” Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994) (citing Rule 2(a), 28 U.S.C. foll. § 2254). In the instant action, petitioner has named Matthew Cate, “Secretary of CDCR” as respondent. This individual is not the proper respondent in this action. Petitioner is cautioned that when he files the petition, petitioner should name the proper respondent. Failure to do so will result in the dismissal of the petition with leave to amend. See Stanley, 21 F.3d at 360.

pauperis. See 28 U.S.C. §§ 1914(a), 1915(a). The court will not issue any orders granting or denying relief until an action has been properly commenced. Therefore, petitioner's motion is denied without prejudice. Petitioner is granted an opportunity to file his petition, and to submit an application requesting leave to proceed in forma pauperis or to submit the appropriate filing fee.


In accordance with the above, IT IS HEREBY ORDERED that:

1. Petitioner's May 25, 2011 motion for stay and abeyance (dkt. no. 1) is denied without prejudice;

2. Petitioner is granted thirty days from the date of service of this order to file a petition that complies with the requirements of the Rules Governing Section 2254 Cases, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the petition must bear the docket number assigned this case; petitioner must file an original and two copies of the petition. Petitioner shall also submit, within thirty days from the date of this order, the application to proceed in forma pauperis on the form provided by the Clerk of Court, or the filing fee in the amount of \$5.00. Petitioner's failure to comply with this order will result in a recommendation that this matter be dismissed; and

3. The Clerk of the Court is directed to send petitioner the court's form for filing a petition for writ of habeas corpus, and the application to proceed in forma pauperis by a prisoner.

DATED: June 6, 2011


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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